

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 21, 2008 has been entered.

2. The objection to claims 4, 5, 11, 24, 26, 30, 35, 39, and 40 is withdrawn in light of the claim amendments or cancellations.

3. The rejection of claims 4, 5, 11, 12, 22, 23, 25-28, 30-32, 34-37, and 39-42 under 35 U.S.C. 112, second paragraph is withdrawn in light of the claim amendments or cancellations.

4. The rejection of claims 4, 5, 12, 22, 23, 25-32, 34-37, and 39-42 under 35 U.S.C. 112, first paragraph, is withdrawn in light of the claim amendments or cancellations.

5. The rejection of claims 4, 5, 12, 18, and 22-43 under 35 U.S.C. 112, first paragraph, is withdrawn in light of the claim amendments or cancellations.

6. The rejection of claims 4, 5, 28, 29, 32, 33, 34, 37-39, 42, and 43 under 35 U.S.C. 102(b) is obviated by the claim cancellations.

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***Examiner's Amendment***

7. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Jeffrey Mills on September 24, 2008.

The claims have been amended as follows:

Claims 6, 10, 17, and 19 were cancelled.

25. (Currently amended): A propagation material of the transformed plant according to claim 23, wherein said material comprises said [the] nucleic acid [of claim 1], or said [the] vector [of claim 7].

8. Claims 1-3, 7-9, 11, 21-25, and 44-47 are allowed.

***Contact Information***

Any inquiry concerning this or earlier communications from the Examiner should be directed to Ashwin Mehta, whose telephone number is 571-272-0803. The Examiner can normally be reached from 8:00 A.M to 5:30 P.M. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anne Marie Grunberg, can be reached at 571-272-0975. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300. Patent applicants with problems or questions regarding electronic

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September 29, 2008

/Ashwin Mehta/  
Primary Examiner, Art Unit 1638